TRIAL—TAKING PLEADINGS TO JURY ROOM.—In an action by a parent to recover for the loss of services of a minor child, *Held,* not reversible error to permit the jury to take the pleadings with them upon retirement, but the court remarked that such a proceeding was of doubtful propriety, and pleadings should not be given to the jury unless in a particular instance there is some special reason for doing so. *Mattson* v. *Minnesota & N. W. R. Co.* (1906), — Minn. —, 108 N. W. Rep. 517.

The question of submitting the pleadings to the jury upon their retirement for their examination is one of much interest. The principal case states that the propriety of permitting the jury to take with them the pleading was approved in *Brazier* v. *Moran,* 8 Minn. 208. The reasoning of the court in that case was that it is often difficult to arrive at the several issues in a case upon which the jury is to pass without a careful examination of the pleadings, which the jury may have no opportunity of doing before retiring for consultation. And yet it is the duty of the court to make a clear statement of what the issues are, from an examination of the pleadings, the court saying in *Swanson* v. *Allen,* 108 Iowa 419, that setting out the pleadings in lieu of a clear statement of the issues by the court will not be tolerated unless manifestly without prejudice. One of the most extreme cases noted is *Fannon* v. *Robinson,* 10 Iowa 272, where the suit was on several accounts for various items, to which the defendant pleaded payment and failure of consideration, and there were replication, rejoinder, and surrejoinder; all simmered down, the question was whether a note was executed, and if so was it paid and settled. It was held unnecessary for the court to instruct the jury what was admitted and what denied by the several pleadings. In the same court, *Fitzgerald* v. *McCarthy,* 55 Iowa 702, the court's instructions were: "1. For a full statement of issues in this case you are referred to the pleadings, the petition and answer, which are hereby made a part of these instructions. 2. The material inquiry in the pleadings is first as to how much is due plaintiff on his claims and accounts, and, second, for how much, if any, of the plaintiff's claims is Mary Ann McCarthy, wife of her co-defendant, liable." *Held,* error as to first instruction, and not cured by the second, because the issues are not fully stated, a more strict ruling than in the first Iowa case, *supra.* But see *Spaulding* v. *Sattiel,* 18 Colo. 86, where the court say, "pleadings should not be sent out with the jury. If a party desires to have the jury consider any fact admitted by pleadings of the other side, he should request such an instruction. It would be a vicious practice to require the pleadings to be sent out in order that the jury might determine what matters were admitted and what were not." In *Welliver* v. *Pa. Can. Co.,* 23 Pa. Supr. Ct. 79, the court says, "It is not good practice in an action of tort to send a statement of any kind with the jury, particularly where the evidence is conflicting and when the claim for damages is simple and easily kept in mind by the jury. In *Powley* v. *Swenson,* 146 Cal. 471, the court said, "the practice of allowing pleadings to be taken to the jury room, whether read in evidence or not, is not a safe one." (Held not reversible error in absence of showing of prejudice or error.) Practically the same comment was indulged in by the court in *Bluedorn* v. *Mo. Pac. R.,* 121 Mo. 258, holding

the matter largely in the discretion of the court. *Hitchins* v. *Town of Frostburg,* 68 Md. 100, also decides it to be a matter within the discretion of the court; likewise *Snyder* v. *Bradley,* 58 Ind. 143, and subject to review when abused and prejudicial to the objecting party. If the jury is correctly instructed as to the issues in the case, and no ground for objection appears, and no improper use of pleadings is shown, thus prejudicing one of the parties to the action, it seems to be held in most jurisdictions that the giving of the pleadings to the jury upon retirement lies in the discretion of the court, and is not reversible error. *Dorr* v. *Simerson,* 73 Iowa 89; *Alexander* v. *Wheeler,* 69 Ala. 332; *Carroll* v. *Sweet,* 57 N. Y. Superior Ct. 100; *Dawson* v. *Briscoe,* 97 Ga. 408.

WILLS—NATURE OF DISPOSITION—UNNATURAL DISPOSITION.—Testator died leaving property valued at approximately $20,000; eight children survived him as his heirs. By provisions of the will, a son and two married daughters received fifty dollars each, and they seek to have the will invalidated on the ground of undue influence. An afflicted daughter received $2,000; contestants claim that such amount to her is an unnatural disposition, and this "combined with some evidence of undue influence and testamentary incapacity are facts for the jury to consider, to determine undue influence." From a judgment for proponents being coerced by a mandatory instruction nisi, the contestants appeal. *Held,* "While testator may dispose of his property according to his convictions or caprice, yet a will partially disinheriting an afflicted dependent daughter is the object of sharp solicitude of the courts"; that "while an unnatural disposition of property, standing alone, may not avoid a will, yet the result of such unhappy distribution may be tempered and toned down, possibly to avoidance, by allowing it to be weighed by the triors of fact, along with other facts tending to show undue influence or testamentary incapacity." Therefore case is reversed and remanded. *Meier et al.* v. *Buchter et al.* (1906), — Mo. —, 94 S. W. Rep. 883.

The evidence clearly shows that testator deliberated twenty minutes over the contents of the will before signing; and that he realized the position of his daughter by having a guardian appointed in the will. In order to avoid the will the undue influence must be such as to destroy the free agency of the testator at the time and in the very act of making the will. *Bohler* v. *Hicks,* 120 Ga. 800. The fact that a testator does not distribute the property equally between his next of kin does not raise the presumption of undue influence. *Knox* v. *Knox,* 95 Ala. 495. An inference of undue influence will not be drawn from the inequality of a will. 1890, *In re Lasak's Estate,* 57 Hun 417; 1892 (Affirmed), 131 N. Y. 624. The inconvenience or absurdity of a devise is no ground for varying the construction, when the terms of it are unambiguous: nor is the fact that the testator did not foresee all the consequences of his disposition a reason for varying it. (1863) *Sherrod* v. *Sherrod's Adm'r.,* 38 Ala. 357; (1866) *Jackson* v. *Hoover,* 26 Ind. 511. Where a testator makes known his purposes respecting the testamentary disposition of his property, by the use of plain and unambiguous language, though his purpose may seem unreasonable, unjust or absurd to others, his will is its